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4 DEBTOR

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7 **IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

8 IN RE:

9 NITTY GRITTY DIRT, LLC  
10 Debtor.

)  
) Case No. 14-61111-7  
)  
) Chapter 7

**NOTICE OF HEARING**

Date: 11-06-2014  
Time: 10:00 a.m.  
Location: 400 N. Main  
Room 215  
Butte, MT 59701

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15 **OBJECTION TO MOTION TO DISMISS; AND NOTICE OF HEARING**

16 **COMES NOW**, the Debtor, and hereby submits its objection to United States Trustee's  
17 Motion to Dismiss for the following reasons. In the alternative the Debtor requests that it be  
18 allowed to retain counsel not later than seven (7) days prior to Debtor's 341 Hearing.

19 **Brief in Support**

20 **Argument**

21 A. The United States Trustee claims this Court should dismiss the above captioned  
22 case citing *United States v. High Country Broadcasting Co.*, 3 F.3d 1244 (9<sup>th</sup> Cir. 1993) and  
23 stating 1) an LLC cannot appear in federal court without being represented by an attorney, 2)  
24 the petition was not signed by an attorney, and 3) no attorney has entered an appearance on  
25 behalf of the Debtor.

26 Currently the general rule is that only a licensed attorney may appear for or represent  
27 a corporation or limited partnership. However there are exceptions to this rule, when; (1) the  
28 case is in Small Claims Court; (2) there are extraordinary circumstances *Church of the New*

1 *Testament v. United States* 783 F.2d 771 (9<sup>th</sup> Cir. 1986); or, (3) the Court contradicts the  
2 absolute rule and recognize that corporations may be represented in court by a non-attorney.  
3 *Victors Publishers, Inc.*, 545 F.2d 285, 286 (1<sup>st</sup> Cir. 1976).

4 Recently a series of federal court decisions have addressed the question of a non-profit  
5 corporation's ability to practice law. Specifically, the courts have focused on the ability of an  
6 organization to be represented in court by a non-attorney. These decisions have recognized a  
7 general rule that a for-profit corporation may not represent itself in *propria persona*, and have  
8 applied this rule to non-profit corporations.

9 The traditional rule regarding for-profit corporations is that they must be represented  
10 by a licensed attorney in courts of law. This rule was recognized very early in American  
11 jurisprudence in *Osborn v. President, Directors & Co. of the Bank of the United States*. In  
12 dictum, Chief Justice Marshall stated, "It is admitted, that a corporation can only appear by  
13 attorney." This rule had been deemed consistent with 28 U.S.C. § 1654 (1982), which states,  
14 "In all courts of the United States the parties may plead and conduct their own cases personally  
15 or by counsel as, by the rules of such courts, respectively, are permitted to manage and  
16 conduct causes therein." This is true in spite of 1 U.S.C § 1 (1982) which states, "In determining  
17 the meaning of any Act of Congress, unless the context indicates otherwise. . . the words  
18 'person' and 'whoever' include corporations, companies, associations, firms, partnerships,  
19 societies, and joint stock companies, as well as individuals." *Move*, 555 F. Supp. At 691.  
20 Additionally, this general rule against non-attorney representation is not only recognized in the  
21 federal courts, but also has been recognized by state courts.

22 A number of courts have stated their rationale for upholding the rule prohibiting for-  
23 profit corporations from representing themselves *pro se*. One such rationale noted by the  
24 courts is that a corporation is merely fictional, lacking substance, and therefore is incapable of  
25 representing itself. *K.M.A. Inc. v. General Motors Acceptance Corp.*, 652 F.2d 398, 399 (5<sup>th</sup> Cir.  
26 1981). Courts have so held, even when the individual attempted to represent the corporation  
27 is that corporation's president and majority stockholder. A second rationale for prohibiting a  
28 non-attorney to represent the corporation is that it will result in confusion of the legal issue

1 before the court. *Simbrow, Inc. v. United States*, 367 F.2d 373, 375 (3<sup>rd</sup> Cir. 1966). In addition,  
2 by allowing a non-attorney to represent the corporation, a great deal of control over the  
3 management and administration of a case is lost because the non-attorney is not an officer of  
4 the court. Finally, an overriding justification for this rule seems to be that if a party chooses the  
5 benefits of incorporation, then he “must now bear the burdens of the incorporation.” Such  
6 rationale is obviously persuasive, and lends credibility to the rule that for-profit corporations  
7 must be represented in court by attorneys.

8 As described earlier, the general rule concerning representation of a for-profit  
9 corporation has been applied to non-profit corporations. The most notable application of the  
10 rule is found in *Move Organization v. United States Department of Justice*. This case involved  
11 the highly publicized police actions in Philadelphia, Pennsylvania in the spring of 1976. In *Move*,  
12 a civil rights organization filed suit against federal and state agencies seeking damages for a  
13 number of alleged brutal actions taken by law enforcement officials. After discussing the  
14 allegations contained in the complaint, the federal district judge dismissed the complaint. As  
15 grounds for dismissal, the judge stated, “the courts have repeatedly held that corporations and  
16 other organizations must be represented by counsel.” Through this dismissal the judge  
17 effectively applied the general rule regarding for-profit corporations to the non-profit setting.

18 Further, the Ninth Circuit in *Church of the New Testament v. United States* 783 F.2d 771  
19 (9<sup>th</sup> Cir. 1986) recognized the rule regarding improper representation. In this case, the pastor of  
20 the church sought to represent the church and its members in judicial proceedings. Specifically,  
21 the church was seeking a declaratory judgment against the Internal Revenue Service for failure  
22 to recognize its tax-exempt status. After affirming the district court’s dismissal for lack of  
23 subject matter jurisdiction under the Declaratory Judgment Act, the court turned its attention  
24 to the issue of improper representation. It said, “[u]nincorporated associations, like  
25 corporations, must appear through an attorney; **except in extraordinary circumstances**, the  
26 corporation cannot be represented by lay-persons.” The court obviously recognized the  
27 general rule, but carefully couched the language to allow for exceptions.

To a limited extent, for-profit corporations have been allowed to appear without being represented by an attorney. The most obvious example is *pro se* representation in small claims court. 5 *J. Legal Prof.* at 224-225. Also, some decisions seemingly contradict the absolute rule and recognize that corporations may be represented in court by a non-attorney. *Victors Publishers, Inc.*, 545 F.2d 285, 286 (1<sup>st</sup> Cir. 1976). Finally, lay representation is sometimes allowed before administrative tribunals. 5 *J. Legal Prof.* at 225. These exceptions appear to show a general willingness to allow non-attorney representation of a for-profit corporation in a courtroom setting, as long as the advocate is competent. These exceptions seem to be equally applicable to the non-profit setting, and may be the exceptions the Ninth Circuit was referring to in *Church of the New Testament*.

A unique exception to the general rule concerning non-profit corporations has been statutorily created in New York. The applicable part of the New York statute states:

§ 1403 Corporations for the prevention of cruelty. . .

(b) Special Powers. (1) A corporation formed for the purpose of preventing cruelty to children may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting children, and may aid in presenting the law and facts to such court, tribunal or magistrate in any proceeding therein.

(2) A corporation formed for the purpose of preventing cruelty to animals may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting the prevention of cruelty to animals, and may aid in presenting the law and facts to such court, tribunal or magistrate in any proceeding therein.

(3) A corporation for the prevention of cruelty of children may be appointed guardian of the person of a minor child during its minority by a court of record, or a judge thereof, and may receive and retain any child at its own expense on commitment by a court or magistrate.

(4) All magistrates and peace officers shall aid such a corporation, its officers, agents and members in the enforcement of laws relating to or affecting children, and for the prevention of cruelty to animals. *N.Y. Not-For-Profit Corp. Law § 1403 (McKinney 1970)*.

Important observations may be made about the New York statute. First, it allows non-attorneys to present law and facts to the court in a criminal proceeding. Secondly, it explicitly requires the legal establishment to aid a non-profit corporation. Finally, the statute authorizes the non-profit corporation to represent the rights of other parties, not just those of the

1 corporation. This final observation skips over the issue of self representation, and moves  
 2 forward into the area of non-profit corporations representing other interests. This statute  
 3 clearly provides standing to non-attorneys who would be prohibited by the general rule  
 4 concerning for-profit corporations.

5 Generally, a for-profit corporation must be represented in court by a licensed attorney.  
 6 The current trend toward applying this rule to non-profit corporations is still in its early stages.  
 7 Aside from these exceptions, there is public policy in favor of legally aiding non-profit  
 8 corporations. The most obvious and arguably most important example of this policy is the  
 9 federal tax-exempt status which is allowed non-profit corporations. 26 U.S.C § 501 (1982). A  
 10 second example of the preferred status of non-profit organizations is found in *In re Primus*. 436  
 11 U.S. 412 (1978). In this case, the United States Supreme Court held that an attorney, acting as a  
 12 representative of a non-profit organization, may inform individuals of their potential legal  
 13 rights, and that the attorney's actions were protected from disciplinary proceedings for  
 14 solicitation by the First Amendment *Id* at 432-433. These two examples demonstrate legislative  
 15 and judicially created methods of encouraging the aid of non-profit organizations in advancing  
 16 their interests within a legal setting. The recognized exceptions to the rule of corporate  
 17 representation by attorneys, and the clear public policy in favor of non-profit organizations  
 18 mandates a close examination of the applicability of the corporate representation rule to the  
 19 non-profit setting.

20 The *pro se* representation of a corporation in small claims court contradicts the absolute  
 21 rule that a corporation must be represented by an attorney. Furthermore recent court  
 22 decisions have provided exceptions for non-attorney representation of a corporation *Victor*  
 23 *Publishing, Inc.*, 545 F.2d 285, 286 (1<sup>st</sup> Cir. 1976) in extraordinary circumstances. *Church of the*  
 24 *New Testament v. United States* 783 F.2d 771 (9<sup>th</sup> Cir. 1986).

## 25 CONCLUSION

26 For the reasons set forth above Steven L. Cavanaugh, managing member for Nitty Gritty  
 27 Dirt, LLC, respectfully requests that this Court allow *pro se representation* in this case as the  
 28 recent real estate meltdown coupled with the current economic conditions are historical and

1 extraordinary and have stripped the Debtor of the funds needed to retain counsel.  
2 Furthermore, at issue is whether or not the mere filing of the petition constitutes an  
3 appearance. Debtor respectfully requests this Court to deny U.S. Trustee's motion to  
4 dismiss. In the alternative Debtor requests that it be given the opportunity to retain counsel not  
5 later than seven (7) days prior to the Debtor's 341 Hearing.

6 **RESPECTFULLY** submitted this 6<sup>th</sup> day of October, 2014.

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8 Nitty Gritty Dirt, LLC

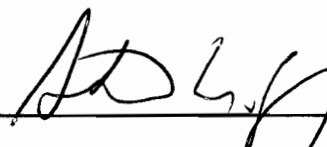
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10 Steven L. Cavanaugh, Managing Member  
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**CERTIFICATE OF SERVICE**

I, the undersigned, Steven L. Cavanaugh, does hereby certify under penalty of perjury that a copy of the foregoing **Objection to Motion to Dismiss; and Notice of Hearing** was duly served upon all parties and interested persons of record by mailing a copy thereof sent by first class mail, postage prepaid, to them or their attorneys at the address set forth below on the 6<sup>th</sup> day October, 2014.

BY:   
Steven L. Cavanaugh

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